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# Recent Legislative Developments: Busing Moratorium-an Analysis

# RECENT LEGISLATIVE DEVELOPMENTS

## BUSING MORATORIUM—AN ANALYSIS

*The author engages in a critical analysis of the busing moratorium statute promoted by the Nixon Administration and recently passed by Congress. He discusses recent judicial developments in the desegregation area that have precipitated enactment of the measure, and takes the position that the federal judiciary has promulgated a far too liberal interpretation of the fourteenth amendment in its zeal to achieve politically untenable social ends. He points out specific defects which render the statute substantially inadequate as a deterrent to further student transportation, and indicates the direction of future legislative solutions to the controversy.*

On June 8th of this year, Congress enacted Title VIII of Public Law No. 92-318, a set of provisions attached to the Higher Education Act purporting to offer some degree of legislative relief from the recent escalation of court-ordered transportation of students for purposes of achieving desegregation.

The act contained a measure aimed at Department of Health, Education & Welfare administration in the area which prohibits the use of federal funds for busing unless voluntarily requested by local officials, and, under any circumstances, where the time or distance of travel is so great as to risk the health of the children or significantly impinge on the educational process, or where the educational opportunities available at the school to which the pupil will be bused will be substantially inferior to those where he would otherwise be assigned. A complementary provision forbids federal officials from requiring the expenditure of state or local money for busing, or from conditioning the receipt of federal funds upon the implementation of busing, both with the same qualifications as to voluntary local request, time or distance, and inferior opportunities.

Directed more specifically at the judiciary is a moratorium on the implementation of any new or pending United States district court order to bus until all appeals to such order have been exhausted, or until January 1, 1974. In addition, there is an authorization to parents of students transported under finalized court orders to seek intervention or reopening of further effectuation of such orders if the time or distance would impair health or impinge on the educational process. Finally, there is a section establishing national uniformity in the application of rules of evidence required to prove discrimination, and in the application of desegregation orders.

## HISTORY

A review of the recent history of the busing controversy reveals an ever-strengthening support in the federal courts for the implementation of mandatory student transportation as the only acceptable expedient for eradicating unconstitutional racial separation.[1] The provision of section 407(a) of the Civil Rights Act of 1964[2] which ostensibly denies courts or officials the use of busing to correct public school segregation, has been steadily eroded by case law[3] to the point where it is applicable only when the sole purpose of the busing is arbitrarily to obtain a certain racial mix, there being no applicability where the purpose is to end state-imposed dualism or its vestiges.[4] This position, until very recently, dictated the promulgation of the vast majority of busing directives in the southern states, where patterns of segregation could be readily traced to affirmative state action establishing separate black and white educational facilities.[5]

The extension of the controversy into northern metropolitan areas has been precipitated by a wide array of socio-political factors, but the judicial rationale for authorization of desegregation plans in what were heretofore considered *de facto* situations[6] involves the linking of newly recognized and admittedly subtle forms of governmental action (or inaction) to the development of ostensibly voluntary residential patterns.[7] The common theme in these cases seems to reveal a desire to reach the effect while denying the true characterization of the cause. Thus, what has evolved is a refusal on the part of the federal courts to acknowledge the obvious limitation on the meaning of "state action" under the fourteenth amendment in the historic milieu of its ratification, and a constant redefining of the phrase to satisfy the necessities of a process of inductive reasoning, whereby any given

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1. Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1 (1971); Davis v. School Dist., 443 F.2d 573 (6th Cir. 1971); Brewer v. School Bd., 397 F.2d 37 (4th Cir. 1968).
2. 42 U.S.C. § 2000c-6 (1970).
3. Clark v. Board of Directors, 328 F. Supp. 1205 (E.D. Ark. 1971). United States v. School Dist., 404 F.2d 1125 (7th Cir. 1969).
4. Harvest v. Board of Pub. Instruction, 312 F. Supp. 269 (M.D. Fla. 1970).
5. Green v. County School Bd., 391 U.S. 430 (1968). Plaquemines Parish School Bd. v. United States, 415 F.2d 817 (5th Cir. 1969).
6. Keyes v. School Dist. No. 1, 445 F.2d 990 (10th Cir. 1971); Oliver v. School Dist., 448 F.2d 635 (6th Cir. 1971).
7. The conflicting developments can be exemplified by reference to a May, 1972 opinion in Spencer v. Kugler, 326 F. Supp. 1235, 1243 (D.N.J. 1971), *aff'd*, 92 S. Ct. 707 (1972), which stated, "A continuing trend toward racial imbalance caused by housing patterns within the various school districts is not susceptible to federal judicial intervention". In contrast are the findings of Judge Roth in Bradley v. Milliken, 338 F. Supp. 582 (E.D. Mich. 1971), that policies of lending institutions and real estate associations and the availability of government-subsidized low-income housing had officially created the black city surrounded by white suburbs. A significant reality overlooked by Judge Roth is that segregated housing would exist to the same degree voluntarily, with or without official reinforcement; hence, this alleged "state action" is irrelevant to the cause of *de facto* segregation.

predisposed incidence of unconstitutional segregation as a premise can be made to support a conclusion of "state action" as the cause thereof.

It can only be assumed that this process of declaring *de facto* to be *de jure* is precipitated by a silent recognition among the judiciary that the resolution of some racial segregation is beyond the reaches of its constitutional mandate, which recognition is overridden, however, by a refusal to surrender the question to its proper legislative sphere, fearing that Congress, in its legitimate discretion, would decline to act against voluntary residential-based school imbalance.

It is in this context of recent desegregation rulings, the most extensive of which order the obliteration of political boundaries to achieve metropolitan balances,[8] that Congress and the Administration have initially intervened. The act clearly represents a first step into an area heretofore governed by case law directives.[9] The previous legislative treatment primarily concerned procedural requirements for initiating litigation, guidelines as to the measure of compliance with desegregation orders[10] (which guidelines themselves are governed by reference to judicial imperative),[11] and federal financing as an incentive to, and as assistance in, their effectuation.[12]

## EFFECTS OF THE ACT

This statute, in contrast, constitutes a congressional embarkation on a path of independent policy-making in a direction seemingly at odds with the legal position at which the federal courts have arrived. On its face, this might appear to present grave constitutional implications as to the separation of powers between the three governmental branches,[13] specifically in respect to the Broomfield amendment,[14] establishing the moratorium on district court orders. There can be little legitimate doubt, however, that as a result of the power conferred upon Congress

8. Bradley v. School Bd., 338 F. Supp. 67 (E.D. Va. 1972); Johnson v. San Francisco Unified School Dist., 339 F. Supp. 1315 (N.D. Cal. 1971); Bradley v. Milliken, 338 F. Supp. 582 (E.D. Mich. 1971).
9. Hoff, *The Courts, HEW, and Southern School Desegregation*, 77 YALE L.J. 321 (1967), noted, perhaps now ironically, that for ten years, desegregation supporters contended that courts were unable to enforce the law and that the legislative powers of government needed to be invoked. The article further observed an imminent swing back to an awareness that the courts should not retire from the field.
10. Civil Rights Act of 1964, 42 U.S.C. §§ 2000c-6 to 2000c-9 (1970).
11. Raney v. Board of Educ., 381 F.2d 252 (8th Cir. 1967); Clark v. Board of Educ., 374 F.2d. 569 (8th Cir. 1967); Betts v. County School Bd., 269 F. Supp. 593 (W.D. Va. 1967).
12. Civil Rights Act of 1964, 42 U.S.C. § 2000d (1970); Dunn, *Title VI, The Guidelines, and School Desegregation in the South*, 53 U. VA. L. REV. 42 (1967) discussed Title VI as heralding an initial legislative approach to desegregation—financial aid as an inducement.
13. O'Malley v. United States, 314 U.S. 574 (1941). Massachusetts v. Mellon, 262 U.S. 477 (1923).
14. Student Transportation Moratorium Act of 1972, Pub. L. No. 92-318, Title VIII, § 803 (June 23, 1972).

in section 5 of the fourteenth amendment[15] and more pointedly in section 2 of Article III,[16] where the aim of Congress would be to develop comprehensive national policy legislation,[17] it has the power to declare a suspension on the use of remedies by the federal courts (at least temporarily) in order to engage in the enactment of such legislation.

Although there exists, of course, no precedent in precisely this type of situation, Congress has dealt with the question of remedy in the courts since 1793, in one way or another,[18] and there appears to be ample authority for the invocation of this legislative power. It is most significant that what is being denied by section 803 is the use of one particular equity remedy: there is no implication of a legislative reversal of the basic finding of segregated educational facilities as unconstitutional.[19]

On the other hand, there can be found severe limitations on its effectiveness as even a temporary measure. A crucial blow has already been dealt by Justice Powell's opinion in a September 1, 1972 decision[20] denying a request by Augusta, Georgia that a busing order be stayed due to the moratorium. Acting alone through his broad supervisory powers over the Fifth Circuit, the Justice ruled that Congress, through its employment of the phrase "a balance among students with respect to race" in section 803, intended to suspend the use of busing only when the goal was "racial balance", which he indicated was synonymous with eliminating *de facto* segregation. The language of the opinion clearly suggests that all traditional southern *de jure* desegregation decisions, even when they involve extensive busing, will be unaffected by the new statute.[21] Secondly, because it is not retroactive, the moratorium may discriminate, although not unconstitu-

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15. U.S. CONST. amend. XIV § 5, "The *Congress* shall have the power to enforce, by appropriate legislation, the provisions of this article." (emphasis added).
16. U.S. CONST. art. III § 2, "In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, *with such Exceptions*, and under such Regulations *as the Congress shall make*." (emphasis added).
17. H.R. 13,915, 92d Cong., 2d Sess. (1972).
18. Commissioner v. Estate of Bedford, 325 U.S. 283 (1945); National Exchange Bank v. Peters, 144 U.S. 570 (1892); The Francis Wright, 105 U.S. 381 (1882); *Ex Parte* Vallandingham, 68 U.S. (1 Wall.) 243 (1864).
19. Brown v. Board of Educ., 347 U.S. 483 (1954).
20. Drummond v. Acree, 41 U.S.L.W. 2123 (U.S. Sept. 1, 1972). The opinion noted, however, that the prohibition on use of federal funds would remain valid in all cases because Congress had included the term "desegregation" in the Student Transportation Moratorium Act of 1972, Pub. L. No. 92-318, Title VIII, § 802(a) (June 23, 1972). The significance of Justice Powell's decision is heightened by the fact that he is a Southern conservative and Nixon appointee. Five other members of the Supreme Court have shown themselves to be more liberal on racial issues than Justice Powell, thus making it highly unlikely that the full court would take a position more favorable to the moratorium.
21. The ruling furthermore opens the door to the ironic possibility that the statute could fall victim to its foremost legislative target and most dangerous philosophical adversary, the ever-extending judicial interpretation of "de jure."

tionally,[22] against those who oppose busing but are under final court directives to do so, and, conversely, against busing proponents whose orders have been stayed.[23] Thirdly, since the Supreme Court is left as the final authority in each individual case, and since standard pupil-assignment desegregation cases are handled on an expedited basis (with appeals being exhausted in a matter of months) much of the time element supposedly granted by this section would prove to be illusory. Fourthly, the use of the word "balance" instead of "desegregation"[24] and the use of "socio-economic status"[25] in section 803 may be interpreted to imply a congressional intent to provide statutory authority, now lacking, for treatment of *de facto* racial imbalance situations, and could fortify court efforts to cross school district lines in order to reach suburban schools.[26]

As to the other provisions of the act, even greater limitations are evident. It seems clear, for example, that the entire prohibitive language of the Ashbrook amendment[27] is nullified by the proviso "unless constitutionally required."[28] In addition, it is a reasonable possibility that a request for federal funds by a local school official under a court

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22. Hess v. Mullaney, 213 F.2d 635 (9th Cir. 1954), Carleton Screw Products Co. v. Fleming, 126 F.2d 537 (8th Cir. 1942), and other cases hold that the Equal Protection clause of the fourteenth amendment is applicable to the states, but not to Congress.
23. Soria v. Oxnard School Dist. Bd. of Trustees, 41 U.S.L.W. 2123 (9th Cir. Aug. 21, 1972), clarified any question of retroactivity in denying reconsideration of an application for a stay pending appeal. The court declared that the Student Transportation Moratorium Act of 1972, Pub. L. No. 92-318, Title VIII, § 803 (June 23, 1972), has no application to a case pending at the time of its effective date in which transportation of students, pursuant to an integration plan, is already in operation. Thus, this statute creates the inequitable result, for example, of leaving the anti-busing forces in Charlotte with no effective redress, while those similarly disposed in Detroit are summarily freed from compliance.
24. As noted in Harvest v. Board of Pub. Instruction, 312 F. Supp. 269 (M.D. Fla. 1970), earlier federal legislation still purports to prohibit busing arbitrarily to obtain a "balance" per se. Thus, substitution of the term "desegregation", in addition to reflecting accurately an intent to extend the ban to traditional de jure cases, would have dispelled any inference that Congress, in its deliberation of the moratorium, was accepting the premise that busing in de facto imbalance situations was, but for the measure it was enacting, valid.
25. Legislative approval could be inferred for busing orders which treat socio-economic status as offering the same possibilities of discrimination as now exist in regard to race, religion, and sex.
26. Bradley v. School Bd., 338 F. Supp. 67 (E.D. Va. 1972); Morgan v. Hennigan, C.A. No. 72-911-G (D. Mass. filed Mar. 15, 1972); Bradley v. Milliken, 338 F. Supp. 582 (E.D. Mich. 1971); Jenkins v. Township of Morris School District, C.A. No. A-117 (N.J. Sup. Ct. filed June 25, 1971).
27. Student Transportation Moratorium Act of 1972, Pub. L. No. 92-318, Title VIII, § 802 (b) (June 23, 1972).
28. The decision regarding constitutionality can be made administratively as well as judicially, as noted in Whittenberg v. Greenville County School Dist., 298 F. Supp. 784 (D.S.C. 1969), and Alabama NAACP State Conference of Branches v. Wallace, 269 F. Supp. 346 (M.D. Ala. 1967). Thus, such a decision would render meaningless the prohibitory language here used.

order to bus would be qualified as a "voluntary request"[29] under section 802(a). The qualifications in the funding section as to time or distance risking health or impinging on the educational process (elusive stipulations in any event), which also appear in section 804 as a basis for reopening final cases, again provide only the illusion of additional relief, inasmuch as this provision merely reiterates standards pronounced in *Swann v. Charlotte-Mecklenburg*.[30] The other provision of section 802 prohibiting the use of funds for busing where the student will be transported to a relatively inferior school, also bears the possibility of interpretative peril: successful attack under this provision against a busing order requires proof that one school is inferior, and in so doing, might concomitantly prove discrimination, thereby introducing the constitutional basis on which busing to and from the inferior school could be ordered.

Finally, as noted above, the busing provision of section 407(a) of the Civil Rights Act of 1964[31] is substantially impotent as prohibitive legislation, and, therefore, its extension to all geographical areas by section 806 of this act represents little more than a token gesture toward uniformity in a process which has had its impact fairly consistently and nearly exclusively in the South. Considering these grave weaknesses as even an interim remedy, it seems imperative that a constitutional amendment,[32] some constitutionally valid permanent denial of the remedy,[33] or some equally effective but less disruptive means of desegregating is necessary as a substantive solution.

## TRENDS

The direction in which the nation is currently inclined affords probabilities of serious social and institutional disruption. On one hand, with continued judicial preemption of the field, leading to further student transportation orders, integration, so far as it is alleged to be sociologically and educationally beneficial, would be achieved most expediently.[34] This would be at the expense, however, of considerable impairment of other educational factors.

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29. An affirmative obligation of a school board, imposed by the courts, to erect a unitary nonracial school system, currently implies that the school board's implementation of a busing plan is the only acceptable remedy as noted in Valley v. Rapides Parish School Bd., 434 F.2d 144 (5th Cir. 1970).
30. 402 U.S. 1 (1971).
31. 42 U.S.C. § 2000d (1970).
32. Although numerous amendments are under consideration, one which has received substantial support in the House provides that: "No public school student shall, because of his race, creed, or color, be assigned to or required to attend a particular school", H.R.J. Res. 620 § 1, 92d Cong., 2d Sess. (1972).
33. H.R. 13,915, 92d Cong., 2d Sess. (1972).
34. H.E.W., SCHOOL DESEGREGATION VIA COMPULSORY PUPIL TRANSFER: EARLY EFFECTS ON ELEMENTARY SCHOOL CHILDREN (Report to U.S. Office of Education, Bureau of Research), at 101 (1967); H.E.W., EQUALITY OF EDUCATIONAL OPPORTUNITY (The Coleman Report, U.S. Office of Education), at 29 (1965).

Foremost among them is the neighborhood school system,[35] a historically effective vehicle of public enlightenment and educational experimentation standing as one of the last bastions of local-government control and community accountability in a nation that has forfeited most of its governmental functions to remote and inaccessible bureaucracies without knowledge of, or flexibility for, the unique problems of the individual community. That the destruction of local attendance patterns by busing will effectuate such a forfeiture is patently obvious. It should be clear from countless experiences in other areas[36] that the headlong drive for national uniformity and equalization has had disastrous effects on all that is inherently beneficial in a concept of diverse federalism.[37]

A direct corollary to the loss of community control would be the elimination of property taxes as a revenue source for public schools under pressure from suburban dwellers, who would come to bear all the burdens of school financing while facing the prospect of reaping none of the benefits.[38] More drastically, the move toward metropolitanization as in Indianapolis, Detroit, and Pasadena[39] signals an encroachment upon internal political jurisdictions that were clearly not drawn for discriminatory purposes and should therefore be protected by the Tenth Amendment.[40]

In light of the critical developments in this area, the time is ripe for substantive legislative action. Despite the heated political atmosphere, it seems a safe assumption that any permanent statutory reform or constitutional amendment would, as the moratorium, eliminate busing as a remedy, without tampering with the underlying concept of desegregation as a desirable goal. Thus, the imperatives of *Brown* and its progeny[41] would stand, but would have to be implemented by less expedient and perhaps more expensive methods, without, however, the disruptive facets of the current corrective instrumentalities.

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35. Rader, *Demise of the Neighborhood School Plan*, 55 CORNELL L. REV. 594 (1970); *Racial Imbalance and Municipal Boundaries*, 24 RUTGERS L. REV. 354 (1970).
36. Brune, *Federal-State Relationships as Affected by Judicial Decisions*, 8 U. CHI. L. S. REC. 1 (Spec. Supp. 1958).
37. Brennan, *Some Aspects of Federalism*, 39 N.Y.U.L. REV. 945 (1964).
38. In a related respect, a number of decisions have required state legislatures to restructure funding law to avoid discrimination based on district wealth. Rodriguez v. San Antonio Independent School Dist., 337 F. Supp. 280 (W.D. Tex. 1971), Serrano v. Priest, 5 Cal. 3d 584, 487 P.2d 1241 (1971), *prob. juris. noted*, 41 U.S.L.W. 3007 (U.S. July 11, 1972).
39. United States v. Board of School Comm'rs, 332 F. Supp. 655 (S.D. Ind. 1971); Bradley v. Milliken, 338 F. Supp. 582 (E.D. Mich. 1971); Spangler v. Passadena City Bd. of Educ., 311 F. Supp. 501 (C.D. Cal. 1970).
40. A favorable sign is evident in the Fourth Circuit, where approval was given for the creation of new school districts for cities that were previously included in large county school districts. United States v. Scotland Neck City Bd. of Educ., 442 F.2d 575 (4th Cir. 1971); Wright v. Council, 442 F.2d 570 (4th Cir. 1971); and where Bradley v. School Bd., 40 U.S.L.W. 2813 (4th Cir. June 6, 1972) was reversed June 6, 1972 primarily on tenth amendment grounds.
41. Cooper v. Aaron, 358 U.S. 1 (1958); Brown v. Board of Educ., 347 U.S. 483 (1954); Bolling v. Sharpe, 347 U.S. 497 (1954).

The Equal Educational Opportunities Act[42] proposed by the Nixon Administration would appear to concur in this assessment. Basically, that bill sets forth a priority list of alternative remedies for securing fourteenth amendment rights that seeks to exclude busing. These include traditional neighborhood assignment,[43] freedom of choice plans,[44] creation or revision of attendance zones (without busing[45]) construction of new schools or the closing of inferior ones,[46] the use of magnet schools or educational parks,[47] and any other plan, as the last priority which is "educationally sound and administratively feasible" (a highly nebulous characterization). Considering some of the temporal and financial difficulties of the first-listed alternatives, the last one presents a serious weakness as a positive curb to busing.

An inconsistency exists between the avowed purpose of the bill and the qualifications of the last-listed priority, most particularly that caveat[48] which indicates that busing could be ordered if there exists clear and convincing evidence that no other method is operative. Despite the affirmative and definite stipulation that any busing only be temporary, that it not involve pupils below the seventh grade level,[49] that it not pose dangers to health or the educational process, and that the order could be stayed pending appeal,[50] the fact remains that this exception leaves open the possibility of promulgating the same process which the act seeks to curtail—the invocation of the courts as the arbiters of the acceptability of a given desegregation scheme.

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42. H.R. 13,915, 92d Cong., 2d Sess. (1972).
43. Geographic zones have been held acceptable only if they are established in good faith and not for purposes of preserving segregation or minimizing integration. Ellis v. Board of Pub. Instruction, 423 F.2d 203 (5th Cir. 1970); Graves v. Board of Educ., 299 F. Supp. 843 (E.D. Ark. 1969).
44. Freedom-of-choice plans have been approved only in the relatively few cases where the plans offered realistic promise of promptly and effectively eliminating a state-imposed dual system. Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1 (1971); Jackson v. Marvell School Dist. No. 22, 416 F.2d 380 (8th Cir. 1969); United States v. Board of Educ., 301 F. Supp. 1024 (S.D. Ga. 1969).
45. Pairing, clustering, and other rezoning methods have generally had a favorable reception in the courts, but frequently involve busing. Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1 (1971); Youngblood v. Board of Pub. Instruction, 430 F.2d 625 (5th Cir. 1970); United States v. Mathews, 430 F.2d 1272 (5th Cir. 1970).
46. Courts have insisted that the location of new physical facilities promote, rather than frustrate, the establishment of a unitary school system. Bradley v. School Bd., 338 F. Supp. 67 (E.D. Va. 1972); Kelley v. Metropolitan County Bd. of Educ., 317 F. Supp. 980 (M.D. Tenn. 1970).
47. This is a relatively innovative concept which seems to imply undesirable consolidation and possible large financial expenditures.
48. H.R. 13,915, 92d Cong., 2d Sess. § 402(g) (1972).
49. The House version, passed August 17, 1972, which is generally considered to have little chance of Senate approval, adopts more restrictive terms, limiting busing as a last resort to the school second closest to the student's home, regardless of his age level. Rep. Albert Quie (R. Minn.), although a leading supporter of the bill, has expressed fears that a failure to make distinctions based upon the age of the pupil may overstep the guidelines of *Swann*, which indicated that the age factor would be of paramount significance in determining the limits of student transfer. 118 CONG. REC. 7,874 (daily ed. Aug. 17, 1972).
50. H.R. 13,915, 92d Cong., 2d Sess. §§ 403-04 (1972).

In a more general sense, also, the Administration's proposal exposes its central weaknesses by attempting to guard its constitutional flanks. It suggests in its "findings" that the abolition of "dual school systems and their vestiges" (referring to Southern state-enforced segregation) has been virtually completed, while making concessions in its remedies section to a position that voluntary residentially-based imbalance might also be a matter necessitating remedy.[51]

Both the moratorium and the substantive bill are affirmative steps toward curtailing the execution of transportation orders, but they lack decisiveness and continue to invite litigation of the busing issue. The ultimate remedy would be a constitutional amendment which, 1) positively defines the limits of "state action" which produces unconstitutional segregation (the phrase, as previously noted, has hopelessly strayed from its original contextual meaning by socially innovative judicial interpretation); and, 2) positively deny the use of busing or the transversing of political boundaries as a corrective. Such an amendment would place the responsibility for the pace and direction of social change in the public school field back in the hands of the citizenry and its elected representatives. A less dramatic, but more feasible solution would be a flat legislative ban on busing, unfettered by weakening qualifications, which would additionally provide for reopening and modification of final orders to comply with its provisions. It can only be hoped that those who seek a solution in this area recognize that a permanent and retroactive denial of the present equity remedy is the only certain way of the laying the matter to rest.

GWP

## THE MARYLAND SECURITY DEPOSIT ACT[1]

*In recent years many of the common law precepts governing the landlord-tenant relationship have been either reconstrued by the courts or revised by statute. This revolution stems from both the deteriorating conditions of poor, urban dwellers and the trend toward multiple-unit dwelling in our rapidly changing society. The Maryland Legislature, in passing the new security deposit law, has attempted to keep pace with these changing requirements. The new law approaches the landlord-tenant relationship not from the traditional view of an owner of real*

51. These debilitating inconsistencies can all be traced simply to the failure of the bill to define sharply the limits of de jure segregation, whether such failure be due to political pressures or doubts as to the validity of such a legislatively-drawn distinction under judicial scrutiny (*i.e.*, that such a substantive declaration might exceed the bounds of the Article III authorization to formulate remedial restrictions on the courts).

1. Law of May 31, 1972, ch. 717, §§ 41-43H, [1972] Laws of Md. 1803, *formerly* ch. 633, § 1 [1969] Laws of Md. 1452 and ch. 291, § 1 [1971] Laws of Md. 604.